

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

HAN SOO KIM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:12-CV-03120-BCW
)	
MIDWEST POULTRY GROUP, et al.,)	
)	
Defendants.)	

ORDER OF DISMISSAL WITHOUT PREJUDICE

Before the Court is this Court's Order to Show Cause (Doc. #13) and Plaintiff's response to the Order to Show Cause (Doc. #14). The Court, being duly advised of the premises, having considered Plaintiff's response to the Court's Order, and for good cause shown, dismisses this matter without prejudice.

On November 7, 2012, the Court directed Plaintiff to show cause on or before December 7, 2012 why this matter should not be dismissed for failure to prosecute due to Plaintiff's failure to properly serve Defendants (Doc. #13). The Court has considered the documents filed by Plaintiff on December 7, 2012 and interprets them as Plaintiff's response to this Court's Order to Show Cause (Doc. #14).

Though Plaintiff responded in a timely manner to this Court's Order to Show Cause, procedural deficiencies require this matter be dismissed without prejudice. "[I]f a defendant is not served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice . . . or order that service be made within a specified time." FED. R. CIV. P. 4(m). If a plaintiff shows good cause for his failure to serve a defendant within the specified 120 days, then "the court must extend the time for service for an appropriate period." FED. R. CIV. P. 4(m).

On May 21, 2012, the Court instructed Plaintiff to “serve a copy of his Amended Complaint and the Summons . . . within **120 days** from the date he files his Amended Complaint” (Doc. #9). Plaintiff filed his Amended Complaint (Doc. #11) on May 31, 2012. Therefore, Defendants should have been served no later than October 1, 2012.

As of the date of this Order, Plaintiff has failed to properly effectuate service on Defendants, despite being given ample opportunity by the Court. Though a summons was issued as to AG Forte, LLC and Midwest Poultry on September 14, 2012, there is no indication Defendants have been served in this matter in accordance with Rule 4(m). The Court already specifically instructed Plaintiff to serve his Amended Complaint within 120 days of filing as required (Doc. #9) and issued an Order to Show Cause (Doc. #13) to give Plaintiff the opportunity to show good cause why Defendants have not yet been served in this matter. The Court finds Plaintiff’s response to the Order to Show Cause (Doc. #14) does not address Plaintiff’s failure to properly effectuate service, and having already extended the time for service an appropriate period, the Court dismisses this matter without prejudice pursuant to Rule 4(m). Accordingly,

IT IS HEREBY ORDERED pursuant to Fed. R. Civ. P. 41(b) the above-entitled matter including all claims and counterclaims is dismissed without prejudice, with each party to bear its own costs. It is further

ORDERED this matter is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: December 14, 2012

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT